The SMC's Sentencing Guidelines: Principles and Practice

What do the Sentencing Guidelines mean for doctors and the medical community?

SMC's Sentencing Guidelines for Singapore Medical Disciplinary Tribunals (the Guidelines) were published in July 2020. The Guidelines explain the sentencing objectives in medical disciplinary proceedings, consolidate existing sentencing principles and expound on a framework that a Disciplinary Tribunal (DT) may use as a guide when deciding on an appropriate sentencing order. A DT will only consider the issue of sentencing if it makes a finding under section 53 (1) of the Medical Registration Act.[1]

Key aspects of the Guidelines

The Guidelines differ somewhat from other proceedings that result in the imposition of sanctions or remedies.

The larger public interest considerations are paramount in medical disciplinary proceedings. It serves to uphold the reputation of and confidence in the medical profession and protect the health, safety and well-being of the public.

Contrast this with criminal proceedings where the general objective is to punish the criminal conduct and civil proceedings where the general objective is to compensate the patient for medical negligence.

The Guidelines highlight the common types of disciplinary offences and the various sentencing options available to a DT. There is also elaboration on what each sentencing option entails and when each option may be appropriate.

[1]53.—(1) Where a registered medical practitioner is found by a Disciplinary Tribunal —
(a) to have been convicted in Singapore or elsewhere of any offence involving fraud or dishonesty;
(b) to have been convicted in Singapore or elsewhere of any offence implying a defect in character which makes him unfit for his profession;
(c) to have been guilty of such improper act or conduct which, in the opinion of the Disciplinary Tribunal, brings disrepute to his profession;
(d) to have been guilty of professional misconduct; or
(e) to have failed to provide professional services of the quality which is reasonable to expect of him,
the Disciplinary Tribunal may exercise one or more of the powers referred to in subsection (2).

To assist DTs in weighing all relevant considerations in a systematic way, the Guidelines provide a sentencing framework which draws reference from existing case law, in particular, the sentencing framework which had been earlier established by the Court in Wong Meng Hang v Singapore Medical Council. The sentencing framework takes into account offence-specific factors of "harm" and "culpability", as well as offender-specific aggravating and mitigating factors. Further guidance is also provided on these factors, as well as how to apply the framework when a doctor is found guilty of multiple offences.

Observations

The intent of the Guidelines is to help DTs arrive at fair and consistent sentencing decisions. By setting out the objectives and principles to be applied in sentencing, the Guidelines also promote more transparency in a DT's decision-making process in relation to sentencing.

It is important to note that the application of the Guidelines is dependent on the specific facts and circumstances of the case before the DT. DTs retain discretion and flexibility in sentencing and may depart from the Guidelines when they consider it as appropriate to do so. By the same token, the illustrations in the guidelines are intended to be illustrative, to bring out how the twin parameters of "Harm" and "Culpability" may be calibrated and are not intended to be binding on the DT.

The SMC has noted feedback and concerns raised in relation to the Guidelines. Some of these touch on the rigidity of the sentencing framework. For example, doctors were concerned that where there is a certain severe outcome, they would automatically receive more severe sentences. Doctors were also concerned that they could be taken to task for all consequences arising from a procedure, even minor ones like an infection or other known complications. We have addressed some of these concerns in the FAQs.

The SMC continues to welcome feedback on the Guidelines and would like to assure doctors that the Guidelines are intended to be a living document and that all feedback will be considered when the Guidelines are next revised and updated.

Conclusion

We hope doctors will find the Guidelines useful and that this, together with the changes to the medical disciplinary process arising from the amendments to the MRA, will contribute to the desired outcome of upholding the standards of medical practice, and maintaining the confidence and trust of both the public and the medical profession in the medical disciplinary process.

On this note, SMC would like to once again thank the Chairman, Judge of Appeal, Judith Prakash, and members of the Committee for their dedication and efforts in producing the Guidelines.

Sentencing Guidelines: FAQs

1. The Guidelines appear to be very rigid, is there any scope for a DT to depart from them?

Yes, the Guidelines are not meant to be prescriptive and DTs retain discretion and flexibility to calibrate sentences based on the facts and circumstances of the cases before them. The sentencing framework is in place to guide the DTs and does not prescribe the sentence. As many members and chairs of DTs are medical professionals, these Guidelines will be useful for DTs. They will assist DTs in their decision making in an area which they may be less familiar with.

2. Will the Guidelines lead to harsher or more lenient sentences?

The Guidelines should not lead to either harsher or more lenient sentences. Rather, the Guidelines serve to bring about fair and consistent sentences in cases that come before DTs. While the sentencing ranges within the Guidelines are meant to be indicative and not prescriptive, the Guidelines should help a DT derive an appropriate sentence through a methodical process.

3. Will doctors be taken to task by a DT if patients suffer from consequences arising from a procedure, even minor ones like an infection or other known complications?

It depends on the facts and circumstances of each case. Not every complaint or information warrants escalation to a DT. It would be important to consider nature and extent of the misconduct, the gravity of the foreseeable consequences of the doctor's failure and the public interest in pursuing disciplinary action. In fact, the amended MRA now makes it clear that only a case with cause of sufficient gravity for a formal inquiry may be referred to a DT.

At the DT stage, a doctor must be guilty of professional misconduct in the first place before the DT can impose any sanctions.

It is well established in case law that not every breach would amount to professional misconduct and cross the disciplinary threshold. Mere negligence or incompetence would generally not suffice, the DT must satisfy itself that the conduct complained of fell so far short of expectations as to warrant the imposition of sanctions, i.e. it is so egregious that it warrants disciplinary action.

4. In cases with severe outcomes, will doctors automatically receive more severe sentences?

No, the appropriate sentence does not just depend on the outcome or the apparent "harm" in a particular case. DTs should consider the extent to which the eventual harm was connected to the doctor's misconduct. This is because the eventual harm caused to the patient may not always be the direct result of the doctor's misconduct. For example, a doctor may have misdiagnosed a patient, who eventually died. However, the direct harm which the doctor caused to the patient may merely have been the loss of chance to receive appropriate and timely treatment, or the loss of chance to recuperate. It may be that the patient would have died in any event. The illustrations following paragraph 51(c) of the Guidelines provide some analysis on how the levels of harm suffered by patients could differ in various cases, even when the patient had died in those cases.

This analysis was explained by the Court in Wong Meng Hang, i.e. the Court had analysed the DT case of Dr Fong Wai Yin who had failed to conduct basic tests and provide a timely referral for a patient who had presented with red eyes, high ocular pressure and blurred vision, on three visits over five days. The patient subsequently developed tunnel vision and could not see more than a few feet in front of her. While the Court noted that the injury was severe, it considered the harm to be "moderate" because the resultant harm was in part due to the patient's existing medical condition; the harm that was actually caused by Dr Fong seemed to have been the patient's loss of chance to recuperate from that condition.

5. When will the Guidelines be revised or updated?

The Guidelines are intended to be a living document and the SMC (or the new Disciplinary Commission when the MRA amendments take effect) will update them as and when necessary. This is to ensure that the Guidelines remain relevant and take into account medico-legal developments, as well as developments in case law.

6. Will there be training for DT members on the Sentencing Guidelines?

The Guidelines are designed to be easy for DT members to follow and apply when making sentencing decisions. That notwithstanding, the Guidelines will feature in training sessions conducted for DT members. The SMC further aims to engage the wider medical community and stakeholders on these Guidelines, as well as the impending changes to SMC's disciplinary processes arising from the amendments to the MRA.